

PATENT APPLICATION
ATTORNEY DOCKET NO. 70496

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: David JENKINS et al.

Appln. No.: 09/777,979

Filed February 6, 2001

Title: MEDICAL IMPLANT FOR ELECTRO-
STIMULATION USING DISCRETE
MICRO-ELECTRODES

Group
Art Unit: Unassigned

Examiner: Unassigned

CERTIFICATE OF MAILING

I hereby certify that this paper or fee
is deposited with the United States Postal
Service as first class mail in an envelope
addressed to: Commissioner of Patents and
Trademarks, Washington, D.C. 20231, on
this date.

) 2/10/02

) Date Registration No. 30,562
Attorney For Applicants

PETITION UNDER 37 CFR §1.182

Hon. Commissioner of Patents and Trademarks
Attention: Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

This petition is in response to the "Notice of Incomplete Non-Provisional Application" dated December 10, 2001, for the above-identified application. Applicants respectfully request that the drawings, copies of which are enclosed, are added to the specification and that the original filing date of February 6, 2001, be accorded to the present application.

The present application was filed on February 6, 2001. Unfortunately, the drawings were omitted with the application as filed. Based on a review of the file,

PATENT APPLICATION
ATTORNEY DOCKET NO. 70496

the omission of the drawings appears to have been an oversight. This application was based on, and claimed benefit of, Provisional Applications 60/181,320 (February 9, 2000), 60/249,096 (November 15, 2000), and 60/249,654 (November 17, 2000). The full set of drawings were included in the provisional applications. These were the same set of drawings that were to be included in the present application but were omitted by error (and which are enclosed herein). Moreover, these same drawings were filed with the corresponding PCT application PCT/US01/03319 (filed February 1, 2001; copy enclosed). Applicants respectfully suggest that, since the actual drawings were on file in the United States Patent and Trademark Office in the form of the three provisional applications at the time the present application was filed and that the present application specifically claimed priority from and benefit of these provisional applications (which contained the drawings), that the drawings were in possession of the United States Patent and Trademark Office and thus were effectively included in the application as filed. Furthermore, Applicants respectfully suggest that the enclosed drawings, if included in the present application as requested by the present petition, would not constitute new matter and that a new declaration would not be required.

Finally, Applicants respectfully submit that drawings are fully described in the specification as filed. See, e.g., page 16, line 10, through page 29, line 2. Thus, one of ordinary skill in the art would find the invention enabled without the drawings. This is especially true since, as indicated on page 27, lines 12-21, earlier patents and applications describing the basic electro-implant devices and immobilizing mechanisms are incorporated by reference in the present application. Thus, the inadvertent omission of the drawings should not render the application defective under 37 CFR §1.53. Moreover, and as indicated earlier, inclusion of the drawings as requested by the present petition does not constitute new matter.

PATENT APPLICATION
ATTORNEY DOCKET NO. 70496

Applicants, therefore, respectfully request that the enclosed drawings be included with the application and that the original filing date of February 6, 2001, be granted to the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required in the Application to Deposit Account No. 06-1135.

Respectfully submitted,
FITCH, EVEN, TABIN & FLANNERY



Richard A. Kaba
Reg. No. 30,562

Date: February 10, 2001

FITCH, EVEN, TABIN & FLANNERY
120 South LaSalle Street
Suite 1600
Chicago, IL 60603

Telephone: (312) 577-7000
Facsimile: (312) 577-7007